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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

June 24, 2009

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VIA OVERNIGHT MAIL

Ms. Laura Johnson
Remedial Project Manager (3HS23)
DE, VA, WV Remedial Branch
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Peck Iron and Metal Site
Portsmouth, Virginia

Dear Ms. Johnson:

On May 26, 2009, Norfolk Southern Corporation ("Norfolk Southern") received from Region III of the United States Environmental Protection Agency ("EPA") a letter advising Norfolk Southern that it may have potential liability for environmental conditions at the Peck Iron and Metal Site (the "Site") located in Portsmouth, Virginia pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Specifically, EPA asserted in this letter that it believes that Norfolk Southern "may be liable" under CERCLA with respect to the Site "as a person who arranged for disposal or treatment of hazardous substances sent to the Site" including lead, zinc and polychlorinated biphenyls ("PCBs"). EPA also described in this letter certain activities that it anticipates will take place in connection with the Site and encouraged Norfolk Southern to respond within thirty (30) calendar days to express its willingness or unwillingness to participate in future negotiations concerning the Site.

The purpose of this correspondence is to respond to EPA's letter to Norfolk Southern regarding the Site. As described in more detail below, we have not been able to identify any basis on which EPA has asserted that Norfolk Southern may have liability in connection with the Site. Accordingly, in the absence of additional factual information demonstrating that the predicates for liability under Section 107(a)(3) of

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CERCLA have been established, Norfolk Southern is not inclined to participate in future negotiations regarding the Site.

As you may be aware, EPA issued to Norfolk Southern a request for information pertaining to the Site pursuant to Section 104(e) of CERCLA on August 22, 2008. By letter from Helen Hart, in-house counsel for Norfolk Southern, to Joan Martin Banks, Civil Investigator for EPA, dated October 30, 2008, Norfolk Southern confirmed that after a thorough search of its records, it had been unable to find any documents or information suggesting that Norfolk Southern or its subsidiaries, divisions and affiliates (including Norfolk Southern Railway Company, its railroad operating subsidiary) had sent materials of any sort to the Site. In addition, no records of any contractual arrangements or transactions between Norfolk Southern and either the Peck Company or Peck Iron & Steel Company involving the Site were found.

Given the complete absence of documents and information showing any type of nexus with the Site, counsel for Norfolk Southern requested that EPA provide Norfolk Southern with any documents or information that EPA might independently have uncovered suggesting that Norfolk Southern sent hazardous substances to the Site. In response, on September 18, 2008, Joan Martin Banks sent to Helen Hart two documents. The first of the documents provided by EPA is a solicitation letter from David Peck, Vice-President of Peck Iron & Metal Company, Inc. with an address of 3220 Deepwater Terminal Road in Richmond, Virginia, to J. Eugene Carter, Director of Purchasing for Norfolk Southern Railroad dated January 25, 1983, indicating that Peck Iron & Metal Company "would like to bid for the metal scrap generated by the Norfolk & Southern Railroad." The letter does not begin to establish that Norfolk Southern or its subsidiaries, divisions and affiliates ever sent materials to the Site. Indeed, as a solicitation letter, it indicates the lack of a business relationship between Norfolk Southern and Peck Iron & Metal Company at the time the letter was prepared. The second of the documents provided by EPA is a check reconciliation report for "Peck Richmond Recycling Co." as of September 30, 1992. Among the many entries that are listed is a check to Norfolk Southern in the amount \$83.33 with a reference date of September 25, 1992. No further information is provided. There is nothing to suggest what the check covered or whether it had anything to do with the Site (versus the facility in Richmond explicitly referred to in the check reconciliation report). In its records search, Norfolk Southern found no documents that provide further information about this charge, and importantly, nothing to suggest that the check was related to the Site or to any wastes or other materials being sent to the Site.

At this juncture, the record is devoid of any information or documentation from which we can discern grounds that would lead EPA to conclude that Norfolk Southern may have liability for conditions at the Site pursuant to Section 107(a)(3) of CERCLA. In the absence of any nexus to the Site, there is no reason for Norfolk Southern to be involved in negotiations with EPA regarding the Site. Should information in the future come to light to support a finding of liability under Section 107(a)(3) of CERCLA, Norfolk Southern may reconsider its position. In that

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regard, we renew Norfolk Southern's previous request to EPA to provide any information to us that EPA believes shows a nexus between Norfolk Southern and the Site.

Please do not hesitate to contact me if you should have any questions regarding this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael M. Meloy". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Meloy".

Michael M. Meloy
For MANKO, GOLD, KATCHER & FOX, LLP

MMM/dm

cc: Helen M. Hart, Esquire